

REMARKS/ARGUMENTS

Claims 1-3 and 25 are now in the case. Claims 4-24 have been canceled without prejudice to Applicants' right to pursue their subject matter in appropriate divisional or continuation applications.

Claim 1 has been amended to recite the polymeric amine as being non-cationic and comprising vinyl imidazole. Basis is found at page 2, lines 10-20, the disclosure at page 6 and at page 15, line 17 (vinyl imidazole). Claim 2 recites a preferred polymer. Basis is at page 15, line 17. Claim 3 recites said polymer with a "PAE" resin. Basis is in the Examples, e.g. Example 1, page 22. Claim 25 has been amended to recite the anionic surfactant. Basis is at page 2, lines 10-20. Entry of the amendments is requested.

Formal Matters

For the record, there are no objections or rejections under §112 outstanding.

Rejections Under 35 USC 102

Claims 1, 13 and 25 stand rejected under §102 over U.S. 3,816,321, for reasons of record at pages 3-4 of the Office Action.

Claims 1, 13 and 25 stand rejected under §102 over U.S. 3,673,110, for reasons of record at pages 5-6 of the Office Action.

Claim 1, 13 and 25 stand rejected under §102 over U.S. 5,698,476 or EP 1,020,513, for reasons of record at pages 8-9 of the Office Action.

Applicants respectfully traverse all rejections under §102, to the extent they may apply to the claims as amended herewith.

Succinctly stated, none of the references teaches the vinyl imidazoles of the instant claims. The '321 patent teaches PEI or quaternized PEI polymers. The '110 does likewise. The '476 patent teaches various quats, epoxyalkyl ammonium compounds, etc. (Col. 4, l. 60 – Col. 5, l. 3). EP '513 prospectively contains an incredibly broad teaching of a wide variety of amines (page 3) but, in general, apparently requires cyano or guanidine substituents, not the imidazoles of the present invention.

Inasmuch as the imidazoles of the present invention are not taught in the cited documents, it is submitted that the rejections of the amended claims herein cannot stand under §102. Reconsideration and withdrawal of the rejections on this basis are requested.

Rejections Under 35 USC 102/103-General Comments

Before turning to the specific grounds of rejection, it is useful to consider that Applicants herein have discovered a problem nowhere suggested in the cited documents, and have solved the problem in the manner disclosed and claimed in the application.

At pages 5-6, Applicants describe the problem associated with the use of cationic dye absorbers in washing solutions which contain vagrant anionic dyes together with an anionic surfactant. Succinctly stated, the anionic surfactant can be attracted to the cationic absorber, which interferes with the absorber's ability to trap the vagrant anionic dyes. That, of course, frustrates the whole purpose of the "dye trapper" article.

Having recognized this problem, Applicants herein further recognized that it would be possible to devise dye absorbers which would interact with a dye's aromatic substituents, rather than with their anionic substituents. Thus, the dye could be trapped without interfering with the anionic surfactant. Applicants thereafter devised trapper articles which employ the appropriate dye absorbers to achieve this desirable result.

As the Examiner is aware from case law cited at MPEP 2141.02, "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified." This is part of the "subject matter as a whole" test under 35 USC 103.

Moreover, it is basic patent law that a prior art reference under §103 must teach or suggest all the claim limitations, with a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. *In re Vaeck*, 947 F. 2d 488, U.S.P.Q. 2d 1438 (Fed Cir. 1991) [emphasis supplied].

Succinctly stated, it is submitted that none of the references, taken singly or in combination, teaches or suggests the problem discovered by Applicants herein, much less its solution by means of the vinyl imidazole dye absorbers employed in the present articles.

Specific Rejections Under 35 USC 102/103

Claims 2-4, 6-8, 10-12, 14-16, 18-20 and 22-24 stand rejected under §102, or, in the alternative, under §103, over U.S. 3,816,321, for reasons of record at pages 4-5 of the Office Action, and, separately, over U.S. 3,673,110, for reasons of record at pages 6-7 of the Office Action, and, separately, over EP 1,020,513, for reasons of record at pages 10-11 of the Office Action.

In addition, Claims 2-12 and 14-24 stand rejected under §102 or, in the alternative, under §103, over U.S. 5,698,476, for reasons of record at pages 9-10 of the Office Action.

Applicants respectfully traverse all the aforesaid rejections under §§102/103, to the extent they may apply to the claims as amended herewith.

With regard to the rejections under §102, the comments presented hereinabove relating to the '321, '110, '476 and EP '513 documents continue to apply. Succinctly stated, the imidazoles of the present invention are not taught therein; accordingly, the rejections under §102 should be withdrawn.

With regard to the several rejections under §103, the foregoing comments concerning the problem/solution requirements of the statute apply equally to '321, '110, '476, EP '713, and to any combination thereof. Nothing in these documents relates to the problem of undesirable anionic surfactant/cationic dye absorber combinations. Importantly, nothing in the cited documents suggests the use of dye absorbers having imidazole groups to interact with the aromatic substituents of vagrant dye molecules in aqueous laundry media.

It is further submitted that controlling case law under §103 fully supports the patentability of the amended claims. For the sake of brevity, the disclosures of each of the cited documents will not be repeated here. Reference is made to the succinct statement at page 4 of the present amendment. Suffice it to say that nothing in the documents fairly suggests modifying the disclosed dye-interactive materials to employ the imidazole material used in the present invention.

Even assuming *arguendo* that the various cited documents could be modified to meet the invention defined in the claims as now amended, the case law is clear. The mere fact that the documents could be so modified would not have made the modification obvious unless the documents suggested the desirability of the modification. See, for example, *In re Sernaker*, 702 F. 2d 989, 995-96, 217 USPQ (BNA) 1, 6-7 (Fed. Cir. 1983). This is particularly true in the present invention, since none of the cited documents appreciates the problem addressed herein, much less its solution.

In this regard, attention is further directed to *In re Linter*, 458 F. 2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972), cited at **MPEP 2143.01** for the proposition that:

In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification. [Emphasis supplied]

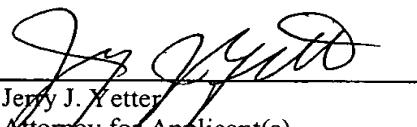
Appl. No. 09/973,445
Atty. Docket No. 8297
Amdt. dated 1/20/2004
Reply to Office Action of 10/24/2003
Customer No. 27752

Again, it is submitted that nothing in any of the cited documents would suggest modifying their disclosures to employ the imidazoles herein. It is therefore submitted that the rejections (to the extent they may apply to the amended claims) are not supported by substantial evidence because the cited documents do not support each limitation of the claims. See *In re Vaeck, ibid* USPQ 2d. at 1443.

In light of the foregoing, reconsideration and withdrawal of all rejections, and early and favorable action in the case are requested.

Respectfully submitted,
Panandiker et al.

By


Jerry J. Yetter
Attorney for Applicant(s)
Registration No. 26,598
(513) 627-1907

January 20, 2004
Customer No. 27752
(8297 Amendment-Response to Office Action.doc)
Revised 10/14/2003